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EXAMINER

VO, HAI

ART UNIT PAPER NUMBER

1771

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/084,359

Applicant(s)

CAPPUCCI ET AL.

Examiner

Hai Vo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 26-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25, drawn to a foam pad, classified in class 428, subclass 304.4+.
- II. Claims 26-41, drawn to a process of making a foam pad, classified in class 264, subclass various.
- III. Claims 42-49, drawn to a mold, classified in class 425, subclass various.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make other and materially different product such as a foam pad comprising a channel that has a width greater than 15 mm.

Inventions III and I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case, the product as claimed can be made by another and

materially different apparatus such as one whose rail comprises a first section and a second section having the same width.

Inventions II and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another materially different apparatus or by hand such as one whose rail comprises a first section and a second section having the same width.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Richard Bauer on 02/11/2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-49 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 21 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

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which applicant regards as the invention. Both claims contain improper Markush language. The term "comprising" needs to be changed to --consisting of--.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haupt (US 6, 443,525). Haupt teaches a vehicle seat assembly 10 having a trim cover 12, a foam pad 14 and a fastening device 16 fit in the trench 20 shown in figures 1 and 2. Haupt does not specially disclose the width of the trench 20. However, such a variable would have been recognized by one skilled in the art as dependent upon the size of the fastening device to fit in the trench. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the trench having the width instantly claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claims 6 and 7, the fastening device 16 has the female portion comprising a base portion 28 and a female attachment portion 30 (figure 3).

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With regard to claim 8, the base portion 28 is encompassed by the foam pad 14 (figure 2).

With regard to claims 9-16, figures 2 and 3 read on the claim limitations.

8. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haupt (US 6, 443,525) in view of Tillner (US 5,641,552). Haupt is silent as to a polymeric material used to form the fastening device. Tillner teaches the anchoring strip and pull-in rod can be made of a flexible material such as polypropylene (column 2, lines 28-30, lines 60-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ polyethylene to form the female portion of the fastening device motivated by the desire to obtain the fastening device that allows contouring and bending along a surface of the foam pad.
9. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Haupt (US 6, 443,525) in view of Tillner (US 5,641,552) as applied to claim 1, further in view of Banfield (US 5,942,177). The combination of Haupt and Tillner fails to suggest the fastening device being made of polyurethane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the polyethylene by polyurethane in the formation of the fastening device because of its easy availability and economic advantage.
10. Claims 1-22, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tillner (US 5,641,552). Tillner teaches a vehicle seat assembly having a trim cover, a foam pad and a fastening device fit in an insertion gap shown in figure 3. Tillner does not specially disclose the width of the insertion gap 3. However, such a

variable would have been recognized by one skilled in the art as dependent upon the size of the fastening device to fit into the insertion gap. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the trench having the width instantly claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claims 6, 7 and 10 the fastening device has the female portion comprising a base portion 5, a female attachment portion 6 and a clip portion 11 (figure 3).

With regard to claim 8, the base portion 5 is encompassed by the foam pad 8 (figure 3).

With regard to claim 11, *In re Dailey*, 149 USPQ 47 (CCPA 1976), there is no evidence on the record to demonstrate that a particular shape of the clip portion is significant or is anything more than one of numerous shapes a person of ordinary skill in the art would find obvious for the purpose of providing the shape of the clip portion, therefore, the shape of the clip portion in itself would not render the claims patentable over Tillner. See *Graham v. John Deere Co.*,

With regard to claims 9-16, figure 3 reads on the claim limitations.

With regard to claims 17 and 24, figure 1 shows the seat assembly comprising a plurality of female portions disposed in the channel and independent of one another.

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With regard to claim 18, figure 2 shows the seat assembly comprising a plurality of female portions disposed in the channel and interconnected to one another at least one connecting portion (anchoring strip 2).

With regard to claims 20-22, Tillner teaches the anchoring strip and pull-in rod can be made of a flexible material such as polypropylene (column 2, lines 28-30, lines 60-62).

11. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tillner (US 5,641,552) as applied to claim 1, further in view of Banfield (US 5,942,177). Tillner fails to suggest the fastening device being made of polyurethane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the polyethylene by polyurethane in the formation of the fastening device because of its easy availability and economic advantage.

12. Claims 1-8, 10, 11, and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banfield (US 5,942,177). Banfield teaches a vehicle seat assembly having a trim cover 852, a foam pad 844 and a fastening device 800 fit in the trench shown in figures 8A and 8B. Banfield does not specially disclose the width of the trench. However, such a variable would have been recognized by one skilled in the art as dependent upon the size of the fastening device to fit into the trench. As such, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the trench having the width instantly claimed, since it has been held that where the



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general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With regard to claims 6, and 10 the fastening device has the female portion comprising a base portion 406, and a hook 402 (figure 1).

With regard to claim 8, the base portion 5 is encompassed by the foam pad 8 (figure 8A).

With regard to claim 11, *In re Dailey*, 149 USPQ 47 (CCPA 1976), there is no evidence on the record to demonstrate that a particular shape of the hook is significant or is anything more than one of numerous shapes a person of ordinary skill in the art would find obvious for the purpose of providing the shape of the hook, therefore, the shape of the hook in itself would not render the claims patentable over Banfield. See *Graham v. John Deere Co.*,

With regard to claims 17 and 24, figures 1 and 8A show the seat assembly comprising a plurality of female portions disposed in the channel and independent of one another.

With regard to claim 18, figures 1 and 8A show the seat assembly comprising a plurality of female portions disposed in the channel and interconnected to one another at least one connecting portion (a base).

With regard to claims 20-23, Banfield teaches the hook can be made of polypropylene or polyurethane (column 7, lines 10-13).

### **Conclusion**

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13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,236,243 teaches a seat assembly comprising a seat cushion and a trim cover secured to each other by the hook strip fasteners located at the bottom of recesses in the cushion.


14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (703) 605-4426.

The examiner can normally be reached on Tue-Fri, 8:30-6:00 and on alternating Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

HV  
February 15, 2003

  
TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
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